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Legal Department.

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Subject:—

Opinions under the

Bombay Primary Education

Act, 1947

File No. O. Prim. Edu. Bom. 152.

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LEGAL DEPARTMENT.

The question raised for the R.L.A's consideration is whether the primary school teachers of the Merged States who held permanent appointments on 30th June 1923 unde the respective States can be treated as / "guaranteed teachers" within the meaning of the proviso to s ction 24(2) of the Bombay Primary Education Act, 1947.

Under proviso to section 24(2) a primary teacher who is a "guaranteed teacher" on the date of coming into force of this Act, may make a further appeal to the State Government against any order of removal or / dismissal. "Guaranteed teacher" as defined in Explanation means a primary school teacher who was holding a permanent appointment as such teacher on 30th June 1923. The Explanation read with the words "primary school teacher who is a guaranteed teacher on the date of coming into force of this Act" appears to provide for the primary school teachers referred to in sub-sections (1) (4) of section 8 of the Bombay Primary Education Act, 1923, i.e. those primary school teachers who were employed under the Educational Department of the State Government on or before 1st July 1923 and who were taken over by the local authority subject to the same terms and conditions on which they were employed by the E.D. It is, therefore, clear that proviso to section 24(2) confers the right of second appeal to Government on only such class of guaranteed teachers who were employed under the E.D. on or before 30th June 1923 and who were taken over by the local authority under section 8(1) of the Bombay Primary Education Act, 1923. The teachers in the merged States who are in service under the State on 30th June 1923 were not teachers employed under the E.D. of the Bombay Government nor taken over by local authorities in the province. Consequently, the view of the U.S., E.D. is correct.

Sd/- J.R. Dhurandhar,
8/1.

Additional Secretary to Government.

U.R. to E.D.No. 207, dated the 9th January 1952.

S-Ca./M.V.V./19.6

Office of the R.L.A.

In his opinion No.11555, dated 14th. August 1950, at page 5 ante the R.L.A. expressed the view that District School Board being a corporate body in whom the school buildings vest was competent to transfer such buildings without the sanction of the Commissioner (now the Director of Local Authorities). A Municipal school board was not a corporate body; and the school buildings in that case vested in the authorised municipality which was not competent to effect transfers of school buildings without such sanction. The Director of Education in his letter at page 27 of the Correspondence section post has drawn two presumptions in this connections. First that if the sanction of the Commissioner is not necessary to the transfer of school buildings by District School Boards, the Educational Inspector of the Division may be authorised to give such sanction. Secondly, with regard to forms IC, II C and III C in Schedule I to the Bombay Primary Education Rules, 1949, which in their preamble refer to the sanction of the Commissioner, the Director presumes that here, too, the Director of Local Authorities is not concerned and proposes that the words "The Educational Inspector of the Division" may be substituted. The R.L.A. is requested to advise whether the presumptions drawn by the Director of Education are correct.

2. The presumption made by the Director of Education that the Educational Inspector of the Division should be authorised to accord sanction to the transfer of school buildings by District/ School Boards in lieu of the Commissioner is not correct. As pointed out in R.L. A's Opinion No.11555, dated 14th August 1950, under section 11 of the Bombay Primary Education Act, 1947, District School Boards are corporate bodies in whom the school buildings vest and they are competent to transfer them in favour of Government. No Sanction of any authority

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is needed for effecting such transfers. With regard to the second suggestion made by the Director of Education it may be stated that under sub-section (1) of section 19 of the Bombay Primary Education Act, 1947, properties vesting in non-authorized municipalities are vested in district school boards which, as & stated above, are corporate bodies empowered to transfer them without the sanction of any authority. The amendments as proposed by the Director in Forms I C, II C, and III C would not be necessary. In fact, the provision in the recitals to these forms about the sanction of the Commissioner of the Division will have to be deleted.

Sd/- P.M.LAD,
4/2.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 1851, dated the 5th February 1952.

4-Cs.

M.V.V.
19/6.

No.2311, dt. 1-2-1952.

Submetted w.r. to E.D. notes at pp. 19-20 ante.

This is in connection with the transfer of the management and control of the Bunter Memorial School, Hadapsar, to the Poona Municipal Corporation. The School property is held in trust by Govt. by virtue of a trust deed dt./ 31-10-33. Attention is invited to R.L.A's Opinion No., 15729, dt./4-10-51 at p.13 ante and the draft tripartiti agreement forwarded therewith (pp. 9-11 ante). No specific point has now been raised for the consideration of the R.L. A. But it appears the E.D. desires the R.L.A. to scrutinise the draft G.R. at pp. 43-45 of the correspondence section post (Vide para 3 of the E.D. note at p.19 ante).

Sd/- D.E.D./6.2.52.

D.S. (Opinion) R.T.K./8.2

R.L.A. Sd/- P.M.Lad,
8/2.

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19/6.

Office of the R.L.A.

The draft Government Resolution at pages 43-45 ante is generally in order except for condition (f) in paragraph 3 thereof which states that the Corporation should award annual scholarships to needy and deserving pupils of the Indian Christian Community. In this connection attention is invited to ~~xxx~~ paragraph 3 of the Remembrancer of Legal Affairs' opinion at page 13 ante and to the penultimate paragraph of the Municipal Commissioner's D.O. letter dated the 21st January 1952 at pages 39-40 of C-section. It does not appear that the question about payment of scholarships has been finally settled. The portion side-lins may therefore be deleted from condition(f)

Sd/- P.M.Lad,
8/2.

Remembrancer of Legal Affairs.

U.R. to E.D.No. 2105, dated the 9th February 1952.

4-Cs.

M.V.V.
19/6.

L.D.R.I. No.3139, dt. 13/2/1952.

The following questions have been raised for the consideration of the R.L.A.

1) Whether it is feasible to direct the authorities of non- Govt. Secondary Schools not to allow the use of their buildings, grounds etc. for holding political meetings and if so whether the authorities concerned should be directed accordingly, and

2) Whether it is open to a teacher in a non G Govt. Secondary School to collect funds for presentation to a leader belonging to a political party which is not declared as a subversive body.

In this case Shri Jay Prakash Narayan, the leader of the Socialist party was allowed to address a public meeting on the playgmx - ground of Pathar High School, Vengurla and a teacher of that school also participated in collecting funds to be presented to the said leader of the party.

See U.R.

So far as the first point is concerned, the attention of the Education Department is invited to the Hyk R.L.A's opinion No. 194 - Confl. dated 19-2-1952 where this is fully considered. On the second point the view expressed by the Education Department and concurred in by the P & S. D. is correct particularly when the right of the secondary school teachers to take active part in the activities of a political party subject to certain limitations is conceded by Government itself. (See the Press Note dated 22-12-1949).

Sd/- P.M.LAD,
3/3/52.

Remembrancer of Legal Affairs.

U.R. to E.D. (through P. & S.D.) No.3461, dated the 3rd March 1952.

4-Cs.

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19/6.

L.D.R.I. No.5025 dt. 11.3.52.

Government ord rs as to who should exercise the powers of the President under Schedule (C) to the Bombay Primary Education Rules in the case of the Municipal Corporation. The L.S.G. & P.H.D. considers that these powers should be exercised by the Mayor and that the relevant provision in the Bombay Primary Education Rules should be amended for he purpose. The R.L.A. is requested to advise whether the view taken by the L.S.G. & P.H.D. is correct.

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20/6.

Office of the R.L.A.

The view taken by the L.S.G. & P.H.Department is correct.

sd/- P.H.Lad,

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.Deptt. 3938. dated 13th March 1952

4-Cs.

M.V.V.
20/6.

Office of the R.L.A.

Primary School Certificates Cancellation of -

The Primary School certificate Examination Rules of 1948 have been supersededin ~~x~~ in 1951 by a fresh set of Rules. The certificates in question were issued in 1929, 1939 and 1940. Rule XII of these Rules which provides for cancellation of the Certificates for unauthorised alterations therein would not apply in respect of these certificates as they have not been issued under rule XI of these rules. (See Addl. Secretary's Opinion No. 494-Confl. dated the 25th May 1951). There would however be no objection to the c rtificates being cancelled with the consent of the teachers concerned after duplicate certificates are issued on the requisite appli - cation made by them.

Sd/- P.M.Lad,
15/3.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 260-Confl. dated the 17th March 1952.

4-Cs.

M.V.V.
20/6.

Office of the R.L.A.

Election to School Board.

Bombay Primary Education Act, 1947 - Section 4(a), 4(11) and 4(13).

Section 4(13) of the Bombay Primary Education Act, 1947, enacts that casual vacancies including that of a Chairman or Vice- ~~Chairman~~ Chairman during the term of a School board shall be filled for the ~~remain~~ remaining period by election, appointment or nomination, as the case may be : Provided that no election shall be held to fill up a vacancy of a member occurring within four months ~~of~~ of the date on which the term of office of the members of the School Board expires. Under section 4(9) of the Act, except as otherwise provided in the Act, the term of office of the members of a School Board shall cease on the expiry of the term of the electing district local board or authorised municipality. In the present case the term of the Surat Municipality is to expire on 31st March 1952 and consequently that date is also relevant for the purpose of section 4(13) of the Bombay Primary Education Act, 1947. In the circumstances, election of Shrimati Gheewala to the Municipal School Board in a vacancy which ~~seemed~~ occurred on 23rd December 1951 is illegal as being opposed to the provisions of section 4(13). The fact that the old School Board can continue to function under the provisions of sub-section (11) is not relevant for the purpose of sub-section (13) of Section 4. That provision is merely an enabling provision allowing a School Board whose term has expired to continue functioning for some time.

Sd/- P.K.Lad,
20/3.
Remembrancer of Legal Affairs.

U.R. to E.D. No.278-Confl. Dated the 20th March ,1952.

4-Cs.

M.V.V.
19/6.

Office of the R.L.A.

Primary Education Act, 1947.

Sec. 10-A, 18-A.

The statutory Committee appointed under sub-section (1) of sect on 10-A of the Bombay Primary Education Act, 1947, has to exercise the powers and duties of the District School Board under the Act. The exercise of such powers and the performance of such duties will be in accordance with such directions as the State Government may from time to time give. The Committee is appointed in a district for which a district local board has not been established. But when a district local board is established in the district the State Government may by an order under sub-section (3) (a) of section 10-A vest in the district school board primary schools with their lands, buildings, records and equipment. The Sabarkantha District is a merged area where no district school board has been constituted and therefore under sub-section (1) of section 18-A all primary schools with their lands, buildings, records and equipment etc. vest in the State Government Under sub-section (2) of this section during the period the properties so vest in the State Government it is lawful for the State Government or such authority as it may appoint in this behalf to exercise all the powers and perform all the duties of a district school board. Although statutory Committee is appointed under section 10-A to exercise all the powers and perform all the duties of a district local board as the property vests in the State Government the rent charged from Primary teachers in respect of the school buildings, which vest in Government, will have, strictly speaking, to be credited to Government. However, the Primary Education Fund being already established for the district, there would he no legal objection to crediting the rent to that Fund. The view taken by Under Secretary, Education Department is correct.

Sd/- P.M.Lad,
29/3.

Remembrancer of Legal Affairs.

U.R. to E.D. No.4936, dated the 31st March 1952.

4-Cs.

The question for consideration is that when the leave granted to the teacher relates to a period prior to integration of the Chhota Udepur and Santarampur States, it will be competent for the D.L.S. Panchmahals to sanction the leave under rule 63(2)(c) of the Bombay Education Rules, 1949, or whether in such a case it will be necessary to obtain the sanction of the State Government.

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OFFICE OF THE R.L.A.

The action taken by the District School Board, Panch Mahals, in sanctioning leave to Shri Pathak would be covered by rule 63(2)(c) of the Bombay Primary Education Rules, 1949. Moreover, since the matter was referred to Government and it gave its approval to the action taken by the District School Board, the decision of Government will be final under section 18-A (5) of the Bombay Primary Education Act, 1947.

Sd/- P.M.Lad,
25/4.

Remembrancer of Legal Affairs.

U.R. to R.D. No.6402, dated the 25th April 1952.

A-Ce.

M.V.V.
19/6.

Office of the E.L.A.

Pending the constitution of the District School Board, Kolhapur, Government appointed the Advisory Committee by G G.R., E.D. No.S.128(24) dated 12.6.1950. This Committee is not a statutory Committee appointed under section 10-A (1) of the Bombay Primary Education Act, 1947, presumably because since the district local board has already been established for the Kolhapur District, no such statutory committee can be appointed under that provision.

2. Sub-section (1) of section 16-A of the Bombay Primary Education Act, 1947, provides that in any area administered by virtue of an order made under section 299-A of the Government of India Act, 1935, all primary schools with their lands, buildings, records and equip - ment and all other properties moveable or immoveable which are vested in, held by, or under the control of Government or a local authority in such area for the purposes of primary education immediately before the date on which such order was made shall, with effect from the said date, if such area has formed part of a district for which a district school board has been constituted, vest in, be held by or under the control of the district school board, and in other cases in the State Government. As Kolhapur is constituted a separate district having a seperate local board, all the primary schools with their lands, buildings, etc., would vest in Government. Under sub-section (2) it shall be lawful for the State Government or such authority as it may appoint in this behalf, to ~~ex~~ exercise in such area all the powers and perform all the duties of a district school board under this Act. The powers of the district school board ar specified in section 13 of the Act. Under section 13 (2) (b), the State Government would no doubt be bound to maintain an adequate number of schools, but in carrying out this duty,

Government.....

Government is not bound to maintain the schools itself; Government is not in any way precluded from handing over management of the local board primary school at Gargoti to the Prince Shivaji Education Society for running the school. Under section 18-A(2) of the Act it would, therefore, be competent for Government to hand over management of the primary school at Gargoti to the Prince Shivaji Education Society.

3. As the agreement is to be executed does not pertain to a matter specified in entry No.39 of H.D. G.R. No. 1758/6 dated 26-1-1950, it will have to be executed by the Secretary, E.D., as required by item No. 1.

Sd/- P.M.Lad,
25/4.

Remembrancer of Legal Affairs.

U.R. to E.D. No.6462, dated the 26th April 1952.

4-Cs.

M.V.V.
19/6.

Office of the R.L.A.

As stated in R.L.A's opinion No.11727, dated the 24th July 1951, under rule 33 of the Bombay Primary Education Rules, 1949, a District School Board can open a new primary school only with the previous sanction of Government. The word "new" in the rule has not been defined in the Act or in the Rules made thereunder. Its meaning as defined in the Concise Oxford Dictionary has already been given in the above R.L.A.'s opinion. Besides the meaning given in that opinion, the word "new" also means "different, changed." The language through which instruction is imparted to pupils in a primary school is of the very essence of that instruction and determines its character. If, therefore, the language through which instruction is imparted in a school is changed, it becomes a new school, that is, a school which is different from the original, which, therefore, would require the previous sanction of Government.

Sd/- P.H.LAD,
26/4.

U.R. to E.D. No. 6568, dated the 28th April 1952.

4-Cs.

M.V.V.
19/6.

Office of the R.L.A.

The question for consideration is whether the expenditure can at all be charged to the Primary Education Fund even with the sanction of Government.

Under clause (i) of rule 160 of the Bombay Primary Education Rules, 1949, the Primary Education Fund can be applied inter alia for the payment of any other sum which has been spent on the authority of Government. So, if Government authorises making of certain expenditure, it can be met from the Primary Education Fund. Since, however, Education Department has ordered that the amount of Rs.436-8-6 should be recovered from the members of the District School Board, Bijapur, it follows by implication that the amount was not authorised to be spent by Government as contemplated by rule 160(i). It is for Education Department to decide whether the authority of Government should be lent in support of this expenditure.

Sd/- P.K.Lad,
22/5.

Remembrancer of Legal Affairs.

U.R. to E.D. No.3640, dated the 23rd. May 1952.

4-Cs.

M.V.V.
19/6.

Office of the R.L.A.

The question raised for the R.L.A's consideration is whether primary teachers in approved schools can contest elections to the local bodies. Under rule 103 of the Bombay Primary Education Rules, 1949, the approved schools are required to conform to the conditions prescribed in rules 122 to 140 (i.e. 122 to 140) of these rules and on a breach of these conditions the recognition of the private school can be withdrawn under rule 109(2). Rule 135 provides that the provisions of rule 70 of these rules regarding the duties and responsibilities of primary school teachers shall apply in the case of primary school teachers serving in approved private schools. Rule 70(1) (1) provides that, subject to such instructions as may be issued by the ~~Asst~~ Administrative Officer, a primary school teacher shall abstain from taking active interest in any political or communal organisation or from canvassing in support of any candidate for any election in the area of the District School Board or the authorised municipality. If a primary teacher wants to be himself a candidate ~~at such~~ he will necessarily have to canvass in support of his candidature. If he cannot canvass in support of any candidate, much less can he canvass in support of his own candidature. Consequently, rule 135 read with rule 70(1) (1) can be said to prohibit primary teachers in approved schools from contesting electing to local bodies. If a breach of rule 135 is committed it would be competent for the school board to take action under rule 109(2).

Sd/- P.H.Lad,
18/3.

Remembrancer of Legal Affairs.

U.R. to E.D. No.4240, dated the 19th March 1952.

4-Cs.

M.V.V./19.6

Office of the R.L.A.

Although no form is prescribed for the warrant to be issued under clause ( ) of sub-section (1) of section 386 of the Code of Criminal Procedure, a warrant by a court usually requires a seal and, therefore, the same difficulty may be experienced in respect of the warrant under that clauses as has been experienced for the warrant under clause (a). If the Home Department is not disposed to issue a notification for a seal in view of the impending operation of the Bombay Separation of Judicial and Executive Functions Act, 1951, the only course left open would be to postpone the recovery of the fine and to levy it by reference to section 70 I.P.C. read with section 389 Cr. P.C. and clause (c) of section 4 of the Bombay Separation of Judicial and Executive Functions Act, 1951.

Sd/- P.M.Lad,
Remembrancer of Legal Affairs.

U.R. to E.D. No. 9227, dated 3rd June 1952.

4-Cs.

M.V.V.
19/6.

Office of the R.L.A.

Under section 12 of the Bombay Primary Education Act, 1947, all primary schools with their lands, buildings etc. which were vested in, held by or were under the control of a District Local Board for the purposes of primary education immediately before the date of the coming into force of the Act became vested in, held by or came under the control of the District School Board. Presumably, the schools in question are schools which so came to be vested in the District School Board, Kanara. Once they came to be so vested, there is no power given in the Act for the purpose of divesting them. The only sections under x which that could be done are sections 14 and 19 to a certain extent. Section 54 which authorises the State Government notwithstanding anything contained in the Act to give to District School Board all such directions as it may consider necessary in regard to any matter connected with primary education and requires the District School Board to comply with such directions is not apt and was not intended for the purpose of divesting what in vested in the School Board. The directions can only be for the purpose of matters connected with primary education, i.e. , in respect of the manner and method of conducting the schools or imparting instruction therein. The scheme of the Act does not contemplate that the schools vesting in the School Board can be transferred by Government's directions to any body not mentioned in the Act. To achieve that intention the Act will have to be suitably amended.

Sd/- P.M.Lad,
6/6.

Remembrancer of Legal Affairs.

U.R. to E.D.No. 9536, dated 7th June 1952.

4-Co.

M.V.V./20/6.

Office of the R.L.A.

It appears that, in order to enable the local autho - xxxx rities to implement promptly Government orders regarding the revised pay and allowances of prizary teachers, Government sanctioned during 1946-47 and 1947-48 provi - sional advance grants to almost all the local authorities in the State on the condition that the x advances should be adjusted later on. Government has now decided to waive the recovery of the advance grants from the District Local Boards but desires to recover such grants from the autho - rised municipalities. The uestion raised for the R.L.A.'s consideration is whether these advance grants are legally recoverable and whether the claims are now time - barred.

2. The limitation for enforcing any claim by or on behalf of the State Government as prescribed by article 149 of the x Limitation Act is 60 Years. Consequently, x if the advance grants are legally recoverable from the the authorised municipalities, such claims would obviously be in time.

3. It is presumed that the advance grants made by Government to the authorised municipalities have been spent by them for the purpose for which they x were made. It is not known why these grants could not be adjusted later on as intended. It is, however, clear that these advance grants were not treated by Government as loans as they were to be satisfied out of future grants. Consequently, on the assumption that these advance gr nts have been spent by the authorised municipalities for the purpose for which they were advanced and they could not be adjusted as intended, it would not be legally feasible for Government to recover them from the authorised municipalities. If, however, the grants have not been spent for the purpose for which they xxx were made and if adjustment also is impracticable , legal steps for recovery a.e possible.

Sd/- P.M.Lad,
25/6.
Remembrancer of Legal Affairs.

U.R. to E.D. No., 10593, dated the 26th June 1952.
4-Cs./M.V.V./20/6.

9

Office of the R.L.A.

The point raised for R.L.A's advice are :-

(1) Whether the view taken by he Education Department that the Baroda Compulsory Education Act (No.5 of Samvat 1983) was in force till 27.3.1950 i.e. the date on which the Bombay Merged States (Laws) Act, 1950 came into force, is correct;

(2) Whether the view taken by the Education Department that no separate orders for applying sections 25 and 29 of the Bombay Primary Education Act to the areas of the Baroda State are necessary and that the in scheme of compulsion in the areas of the Baroda State was inforce under the Baroda Compulsory Education Act, x till 27.3.50 and thereafter is in force under the Bombay Primary Education Act, 1947, is correct;

(3) Whether the course suggested by the Education Department, namely, asking the Director to issue instructions to the Administrative Officers concerned to prepare and submit to him the schemes of compulsion for the areas concerned for 1950-1951 and 1951 al952 and sanction them with the concurrence of the State Government, is in order.

2. Point (1) - The view taken by the Education Departmer that the Baroda Compulsory Education Act (No.5 of Samvat Samvat 1983) was inforce upto 27.3.1950 is not correct. The said Baroda Act stood repealed on 30.7.1949 when the Bombay Primary Education Act, 1947 was ap lied to the areas of the merged State of Baroda under the Baroda State (Application of Laws) Order, 1949. Under para.8 f the said ord r, however, the scheme of compulsion as provided i.. the x said Baroda Act was treated to be a scheme under the Bombay Primary Education Act, 1947. What was saved under the Ord r was the scheme of compulsion and not the said Baroda Act.

3. Points (2) and (3).- Sections 25 and 29 of the Bombay Primary Education Act, 1947 are already in force in the areas of the Baroda State vide section 3 of the Bombay ~~Merged~~/ Merged States (Laws) Act, 1950. The view taken by the Education Department is correct.

It is true that when on 30.7.1949 the Bombay Primary Education Act, 1947 was applied to the areas of the Baroda State by the Baroda State (Application of Laws)

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Order, 1949, it was provided in that order that the xxx scheme of compulsion which was in force in the Baroda State under the Baroda Compulsory Education Act shall be deemed to be a scheme sanctioned under the Bombay Primary Education Act, 1947. However, the result of the Bombay Merged States (Laws) Ordinance, 1949, was that the Bombay Primary Education Act, 1947, as applied to the areas of the Baroda State ceased to xx have effect. The proviso to section 5 of the Ordinance would not be help - ful in continuing in force the former Baroda scheme which itself was, by reason of para. 8 of the Baroda State (Application of Laws) Order, 1949, deemed to be a scheme und r the Bombay Pri ary Education Act, 1947. For, in the first place the proviso does not use the word "scheme" (contrast the language of section 25 of the Bombay General clauses Act, 1904), and secondly,what was continued in force was appointments etc. made or issued under the law in force immediately xxxfx before the commence- ment of the Ordinance and not something which was deemed to have been made or sanctioned under such law. The result, therefore, was that the former Baroda scheme which was deemed to have been sanctioned under the Bombay Primary Education Act, 1947, ceased to survive after the Ordinance came into force. The supresession of the Ordinance by the Bombay Merged States (Laws) Act, 1950, did not make any difference to this position.

4. The only course now left is, therefore, to commence afresh action under sections 25-28 of he Bombay Primary Education Act, 1947. Under those sections and in particular under section 28 the scheme has to xxx take effect from the date notified by the State Government, and such notification cannot, following the usual principles gove ning subordinate ligislation, be given retrospective effect so as to cover the period of 1950-1952. No practical inconvenience will, however, arise, since the scheme was in force;and presumably financial obligations have also been met. The only inconvenience may be in

R respect of enforcement by way of prosecution etc. which it is presumed are not contemplated. The safer course, therefore, would be to take steps to have a scheme hereafter as contemplated by sections 25-28 of the Bombay Primary Education Act.

Sd/- P.M.Lad,
10/9.

Remembrancer of Legal Affairs.

U.H. to E.D.No. 14687-B, dated 11th September 1952.

4-Cs.

M.V.V.
20/6.

Office of the R.L.A.

The short question raised for the R.L.A's considera - tion is ek wheth r it would be legally feasible to entrust the administration of the Provident Fund established under section 46-A of the Bombay Primary Education Act, 1947, to chool Boards.

2. Under section 46-A (k 1) of the Bombay Primary Education Act, 1947, the State Gov rnment shall establish a m provident fund hereinafter called the 'said fund' for the staff maintained by the District School Boards or for the Primary School teachers maintained by the authorised Municipalities. It is clear from this provision that the provident fund established thereunder is a State Provident Fund and as such it will have to be administeered by Government alone unless there is a statutory provision to delegate that authority to any other authority to administer it. The Bombay Primary Education Act contains no provision empower - ing Government to delegate such authority to a School Board. Consequently, it would not be legally feasible for Government to entrust the administration of the Provident Fund established under section 46-A to a School Board. Draft rule 5 of the Provident Fund Rules provides that the over-all control of the State Provident Fund shall vest in the Accountant General, Bombay, the actual administration including the grant of loans to subscribers, recovery thereof, maintenance of individual accounts separately for each subscriber, and such other matters pertaining thereto being carried on by the Administrative Officer on behalf of the Accountant General as part of the functions of the School Board. This provision contemplates that whatever the Administrative Officer is required to do is to be done by him as part of the functions of the School Board. Under the Bombay Primary Education Act, it is not

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the.....

the function of the School Board to administer the provident fund established by Government, nor would it be its function to make recoveries from su sectibers, to sanction loans to the subscribers and to maintain accounts etc. Such functions can, however, x be entrusted to the administrative officer who is a Government servant. Under section 21 the powers and duties of the administrative officer shall be as prescribed. A rule can be framed under section 63 requiring the administrative officer to make recoveries from the subscribers and to grant loans to the subscribers. It is, however, doubtful whether it would be possible for him to take over the duties of maintenance of accounts as the ultimate control over the fund vests in the Accountant General and it is for him to maintain proper accounts of the fund. This question, however, may be considered in consultation with the Accountant General.

Sd/- P.M.Lad,
28.8.52.
Remembrancer of Legal Affairs.

U.R. to E.D. No. 14066, date: the 28th August 1952.

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M.V.V.
20/6.

Legal Department.
R.I. No. 14046, dt. 14.7.52.

Section 4(7) of the Bombay Primary Education Act, 1947 provides that out of the seats of the members of the School Board to be elected by the district local board or the authorised municipality, not less than three shall be reserved in the prescribed manner for persons who have passed the matriculation or second year training certificate examination, or who possess any other equivalent or higher educational qualification which the State Govt. may specify in this behalf. The Chairman, D.L.B., Broach has suggested the specification of such qualifications. The Director of Education, as per suggestion from the Chairman, has, in his letter at pp. 13-14/C, suggested that so far as educational qualifications equivalent to or higher than the Matriculation Examination are concerned, the Govt. may, by executive instructions, specify that the certificates, diplomas etc. treated as equivalent to an higher than the Matriculation Examination of a Statutory University in the Bombay State and other degrees, diplomas etc. recognised by Govt. for the purposes of the Bombay Civil Services Classification and Recruitment Rules, shall be treated as equivalent or higher educational xxii qualifications within the meaning of the second proviso to section 4(7) of the Act, and as regards the Second Year Training Certificate Examination, persons holding the certificates as provided in rule 2(k) of the Bombay Primary Education Rules, 1947 shall be considered to be eligible. The E.D. has, therefore, requested the L.D. to state whether the issue of executive instructions as proposed by the D. E. and which have been incorporated in the draft G.R. at p.15/C by the E.D. would be in order.

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Legal Department.

It appears that in section 4(7) of the Bombay Primary Education Act, 1947, the qualifications are to be "prescribed" in the second provios thereto they are to be "specified". Strictly therefore the latter qualifications can be settled by executive order; neverthless it would be bett r that all the qualifications referred to in the second proviso to section 4(7) are put in the rules and not split up, some in the rules and some in resolutions.

"d/- B.P.Dalal,
20/8.
Additional Deputy Secretary to Governemen
-t.

U.R. to S.". No. 13685, dated the 21st August 1952.

4-Cs.

H.V.V.
20/8.

Office of the R.L.A.

Bombay Primary Education Rules, 1949.

Schedule C - Rule 4.

It appears that the non-authorised municipalities of Bhagur, Trimbak, Manmad, Nandgaon, Sinnar, Igatpuri and Yeola have to elect two representatives as determined by Government under the proviso to clause (a) of section 4(5) of the Bombay Primary Education Act, 1947, on the District School Board, Nasik, and the President of the District Local Board, Nasik, has fixed 25th August 1952 as the date for the election under rule 1 of the Rules for the Election of members for the School Board, in Schedule C to the Bombay Primary Education Rules, 1949. The non-authorised municipalities of Igatpuri and Yeola have been superseded by Government under section 179 of the Bombay District Municipal Act, 1901 and the powers and duties of the municipalities are being exercised by Administrators appointed for that purpose. The President of the District Local Board, Nasik, considers that these administrations will not be concerned in the nomination of the candidates under the proviso to Rule 4 of the Rules for the Election of Member of the School Board, but that they may if they so choose exercise the right of vote on behalf of the municipality. The Director of Education is of the view that as there are no members of the municipalities the Administrators will not be concerned with the nomination but that since the Administrator represents the municipality he can take part in the election of the candidates and vote on behalf of the Municipality. The R.L.A. is requested to advise.

2. Rule 4(1) of the Rules in Schedule C to the Bombay Primary Education Rules, 1949, requires that each candi - date shall either in person or by his propes r and seconder deliver to the Returning Officer, a nomination paper duly completed in the form in Appendix I to this Schedule and subscribed by the candidate himself as assenting to the nomination and by two members of the electing local authority concerned as p.....

proposer and seconder etc.

Under the proviso thereto the proposer and seconder subscribing the nomination of a candidate for election as a representative of non-authorised municipalities shall be members of any of the said electing authorities, It is clear from this provision that the power to subscribe the nomination as proposer or seconder in the case of a candidate for election as a representative of non-authorised municipalities is bestowed on the members of the non-authorised electing municipalities. This is a right conferred on the members personally. The right or privilege given to individual councillors is distinct from the powers and duties exercised or performed by the Municipality as a corporate body. Since the municipalities of Igatpuri and Yeola have been superseded under section 179 of the Bombay District Municipal Act, 1901, and all councillors thereof have vacated their offices under sub-section (3) (a) thereof, in their absence that right cannot be exercised by any other person. Therefore it would not be feasible for the Administrator appointed under this section to subscribe the nomination papers either as proposer or seconder. However since the right to elect has been conferred on the non-authorised municipalities under the proviso to clause (a) of section 4(5) of the Bombay Primary Education Act, .1947, that right can be exercised by the Administrators on behalf of those municipalities under section 179(3) (b) of the Bombay District Municipal Act, 1901.

3. The view taken by the Director of Education in his letter dated the 24th July 1952, is correct.

Sd/- P.M.Lad,
6/8.

Remembrancer of Legal Affairs.

U.R. to L.G.S. & P.H.D. No. 13026, dated the 7th August'52.

4-Cs.
M.V.V.
.20/6.

Office of the R.L.A.

Bom. Primary Education Act, 1947 Sec.4(2).

Sub-Section (2) of section 4 of the Bombay Primary Education Act, 1947 inter alia provides that if the Provincial Government is satisfied that any election has not resulted in the return of the required number of qualified persons willing to take office, the Provincial Government shall nominate from amongst persons who would have been qualified to be elected, the required number of persons as members of the School board and the persons so nominated shall be deemed to have been duly elected, under sub-section (5). This provision does not require that there must be a poll or at least one vote recorded at an election; and it is enough, if for any reason viz. the ineligibility of a nominated candidate to contest the election, as in the present case, the election does not result in the return of the required number of qualified persons, The reserved seat which has remained vacant for want of an eligible candidate wil ~~xkxxx~~ therefore have to be filled in by nomination by Government; and no by-election can be held for that purpose. (See R.L.A's opinion No. 1497 dated the 18th February 1941 and Additional Secretary's opinion No.4477, dated the 19th March 1951).

Sd/- P.M. Lad,
25/7.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 12335, dated the 26th July'52.

4-Cs.
M.V.V.
20/6.

Office of the R.L.A.

Under section 7(1)(a) of the Bombay Primary Education Act, 1947, a member becomes disqualified if he absents himself from the meetings during three successive months or from three consecutive meetings of the School Board, whichever period is longer without the previous permission of the Board. It appears clear from this provision that to save disqualification under this provision, a member must obtain the previous permission of the Board and such permission may be either before he absents himself from the meetings or before the expiry of the prescribed period of three months, etc. In the present case, it is true that Shri Ahire did apply to the School Board for such permission before the expiry of the period of three months and the Chairman made an endorsement on the said application on the very day to the effect that leave was granted in anticipation of the School Board's sanction, but there is no provision either in the Bombay Primary Education Act or in the Rules authorising the Chairman of the School Board to grant such permission in anticipation of the sanction of the School Board. All that the Chairman could do was to place it befor the Board for its sanction which he did not do in time. Consequently, Shri Ahire became disqualified on the x expiry of the period of three months for remaining absent without the previous permission of the School Board. It appears from the facts of this case that Shri Ahire has to suffer for the default of the Chairman of the School Board for, if the Chairman of the School Board had placed the application of Shri Ahire before the Board in time, probably he would not have incurred the disqualification. However, it appears from section 7(1)(a) that the previous permission of the School Board is needed to save disqualification and it was the duty of Shri Ahire to see that his application was placed before the Board in time, that is to say, before he incurred the disqualification, which he failed to do. Consequently,

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Shri.....

Shri Ahire is also partly to blame.

Sd/- P.M.Lad,
9/7.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 11444, dated 10th July 1952.

4-Cs.

M.V.V.
20/6.

Office of the R.L.A.

A District School Board has been constituted for the Satara South District under section 4(8) of the Bombay Primary Education Act, 1947, with effect from the 5th January 1952 and its term of office will expire on the 5th January 1955. It is true that a District Local Board has now xkxx since been constituted for that District but there is no provision in the Bombay Primary Education Act for curtailing the period of the District School Board which has been constituted for a period up to the 5th January 1955. Consequently, that District School Board will have to be allowed to continue to function until the expiry of that period. Moreover, Schedule A to the Bombay Primary Education Rules has not been amended prescribing the constitution of the School Board for the Satara South District. In view of the fact that the old District School Board has to be allowed to x function even though a new District Local Board has since been constituted, the amendment of Schedule A to the Bombay Primary Education Rules will have to be postponed.

Sd/- P.H.Lad,
2/7.
Remembacer of Legal Affairs.

U.R. to E.D. No. 630-Confl. dated the 3rd July 1952.

4-Cs.

H.V.V.
20/6.

Office of the R.L.A.

Bombay Primary Education Rules Rule 41(1)(c)(ii).

It is undisputed that the power to promote clerks vested in the Administrative Officer. If the Administrative Officer in the present case passed the order promoting Shri L.R. Patel, superseding Shri S.M. Shah independent of the resolution of the School Board, the order would be deemed to have been passed by the Administrative Officer in exercise of powers vested in him and as such legal. But the Administrative Officer appears to have passed the order to give effect to the resolution of the School Board, in which case the order would be deemed to be the order of the District School Board and, as such, it would be vulnerable. However, these considerations do not appear to be very material in view of the fact that Shri Shah, who is the aggrieved, party, himself has withdrawn his objections to the appointment of Shri L.R. Patel so far back as in October 1948 (See the Administrative Officer's report dated 28th October 1948 at page 33/C). In these circumstances, the application of Shri Shah may be rejected.

Sd/- P.N.Lad,
29/8.

Remembrancer of Legal Affairs.

U. R. to R.D. No. 14116, dated the 29th August 1952.

4-Cs.

M.V.V.
20/6.

Office of the B.L.A.

On a strict construction of sections 20(2A) and 46A of the Bombay Primary Education Act, 1947, it would seem to be intention that on the date of the coming into force of the Bombay Primary Education and Housing Board (Amendment) Act, 1951, the subscriptions to the Provident Fund should be recovered by Government, and that the District School Boards and authorised municipalities would cease to have connection with the Provident Fund excepting for the purpose of making the transfer contemplated by the concluding portion of sub-section (2) of section 46-A. However, inquiries show that the rates of subscription and contrubutions and other conditions of t e Provident Fund established by the State Government have not so far been prescribed as required by sub-section (2A) of section 20, and that the District school Boards and authorised municipalities have continued to manage the Provident Fund as heretofore. That being so, there should be no objection to postponing the transfer under sub-section (2) of section 46-A. However, that sub-section expects that transfer should be made as soon as may be. The expression "as soon as may be" cannot legitimately be given the wider meaning of having regard to the convenience and to the business interests of the party concerned (Wigan Coal & Iron Co. v. Eckersley (1910), 103 L.T. 468, H.L. p.470). Nonetheless, it would permit a reasonable interval for the purpose of transfer. The length of the interval would depend upon the time which may be taken for making the accounts of the Provident Fund , separating them from the General Fund Etc. Having regard to the state of affairs after the passing of the Bombay Primary Education and Housing Board(Amendment) Act,

..Act, 1952, an interval of about three months, i.e., till the next ligislative session would by no means be unreasonably long and in transgression of the —— intention underlying the expression " as soon as may be".

Sd/- P.M.Lad,
26/10.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 17766/A, dated 27th October 1952.

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M.V.V.
20/6.

OFFICE OF THE R/ L. A.

It appears that the primary teachers and other staff in the newly formed districts where District Local Boards have not yet been established are being paid directly from the State revenues and should, therefore, be normally treated as Government servants for the period during which this arrangement is in force. After the School Boards are constituted, these primary teachers and other staff will have to be transferred to those Boards. It is feared that some complications may arise in the course of the transfer of these servants and it is proposed to create an Advisory Committee under section 10A of the Bombay Primary Education Act and vest in it the requisite powers of control over the staff so that they might cease to be Government servants. R.L.A. is requested to advise whether the proposal would be legally feasible.

Section 10A(1) of the Bombay Primary Education Act, 1947, provides that notwithstanding anything contained in this Act and save as otherwise provided in section 18A, in any district for which a District Local Board has not been established, the powers and duties of the District School Board under this Act shall be exercised and performed by such authority as the State Government may appoint and the exercise of such powers and performance of such duties shall be in accordance with such directions as the State Government may from time to time give. Sub-section (2) provides that the State Government shall maintain such number of primary schools in such districts as it may from time to time determine. Under section 18AA(4), the District School Board or the authorised municipality or the Provincial Government, as the case may be, shall take over and employ such primary school teachers and other persons as were employed by or under Government or local.....

authority immediately before the date notified under sub-section (3) or the said date as the case may be for the purposes of primary education on the same terms and conditions on which such teachers or persons were employed immediately before the relevant date or on such terms and conditions as the Provincial Government may direct. Reading section 10A(2) and section 18A(4) together, it appears that, although the primary school teachers and the staff in these districts have been taken over and paid by Government, there is no express provision that during the transitory period they would be treated as Government servants. (Cf. section 20(2) which specifically provides that the staff maintained under sub-section (1) shall be the servants of the District Local Board or of the authorised municipality). Assuming that the primary school teachers and the staff taken over by Government are to be treated as servants of Government during the period, it would still be open to Government to appoint an advisory committee under section 10A(1) and vest in it the powers of the District School Board under section 20 to control the primary school teachers and the staff in the district although Government may pay for such teachers and the staff. In the circumstances, the proposal made by E.D. would be legally feasible.

Sd/- P.M.Lad,
7/11.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 18605/A, dated the 8th November 1952.

4-Cs.

M.V.V.
20/6.

Office of the R.L.A.

Bombay Primary Education Act, 1947.

The questions raised for the consideration of the R.L.A. are.-

(1) Whether if the District School Board, Surat, opens primary schools in the villages in which the Mission Primary Schools are being run at present, it would be feasible to stop the grant-in-aid to such Mission Schools;

(2) Whether the District School Board, Surat, can withdraw x recognition of x the four Mission Schools namely at Gumbi, Bamanvel, Velvach, and Kheram on the four grounds mentioned in the Education Department note, namely :-

1. Converting pupils while at school without the knowledge and consent of their guardians
2. Enforcing at endance of pupils at religious instructions;
3. Issuing Leaving Certificates to pupils with false entries, and
4. x Tempering with public records.

(3) Whether in view of the fact that the grants in-aid were claimed by the Manager of the Schools at higher rate by falsely representing that the pupils belonged to Backward Class people even though in fact they were converted to Christianity, the Manager can be charged with an offence under section 420 of the Indian Penal Code.

2. Question (1) and (2). - Section 39(1) of the Bombay Primary Education Act, 1947, provides that every private school which fulfils the conditions prescribed by rules shall be entitled to recognition as an approved school. Rule 109(2) of the Bombay Primary Education Rules provides that the recognition given to a private school may at any time be withdrawn by a School Board if a public school is opened in the same locality and

.....another school is not considered necessary or for other reasonable and sufficient cause. The course suggested by the Education Department to ask the District Local Board, Surat, to open new school at places where the Missionary Schools exist and to withdraw recognition of such schools is legally in order (Vide R.L.A's opinion No. 7957, dated the 13th June 1950) . Once the recognition is withdrawn the question of making grant does not arise. As regards the withdrawal of grants from the said four schools on the first two grounds mentioned in the ---- Education Department note, Rule 111 of the said Rules provides that an approved private school which is once aided from the Primary Education Fund shall continue to be so aided unless the School Board, on the recommendation of the Deputy Educational Inspector, directs that such aid should cease. The said rule 11 and rule 128 have been amended by Government Notification, Education Department No. PER 1050/F, dated 3rd January 1951. Sub - rule (3) of rule 111 as so inserted provides that a School Board shall direct that the aid should cease -

(a) if any pupil attending the school is required to take part in any religious instruction imparted or any religious worship that may be conducted in such institution or in any remises attached thereto except with the consent of the guardian of the pupil ; or

(b) x x x x

3. Before the said rule was so amended the relevant provision which is material to the facts of thi case was that the grant-in-aid could be stopped if the school, being the only school of its kind in the locality, makes attendance at religious instruction of a particular denomination compulsory for pupils. The Head Masters of three schools have stated (pp.75,111 and 151, Statement) that the religious instruction is voluntary . The Head Mistress of the fourth school says (p.151,

....Statement) that the religious instruction has been stopped from about the year 1950. Almost all conversions referred to in the District Superintendent of Police's report have taken place before rule 111was amended. The facts stated in the report would not therefore be sufficient to direct the withdrawal of grants. If, however, it could be proved that religious instructions continued to be given by each of the said four schools after 3rd January 1951 to pupils without the consent of their guardians, the grants could be withdrawn under the amended rules 111 and 128 (vide R.L.A's opinions No. 7957, dated the 13th June 1950 and No. 16394, dated the 16th October 1951). The two other grounds namely the 3rd and 4th of Education Department note are not sufficiently strong to justify the withdrawal of grant for the reasons stated in the next para. The procedure prescribed in each of the rules 109 and 128 may however be followed before recognition or grants are withdrawn.

4. On the third question whether the Manager of the school can be successfully prosecuted for an offence of cheating (section 420 I.P.C.), the answer is in the negative. To make out an offence of cheating it must be established firstly that the Manager deceived the authority in respect of facts on which the claim for grant-in - aid is based, secondly that he did so dishonestly or fraudulently, and thirdly that thereby the authorities were induced to pay the grant-in-aid. Now where the deception is alleged to lie in the fact that although some of the students were convert Indian Christians they were shown in the school register as Hindu Dhodias. It appears that the students in question were in fact Hindu Dhodias when they entered school, They were, therefore entered and rightly entered in the register as Hindu Dhodias. That entry could not be altered without the sanction of the School Board Chairman (Vide Rule 132(

.....There is no obligation on the Manager of the school to inform the School Board Chairman of the conversion of the student to Christianity. Therefore no deception can be said to have been practised merely because the description in the register was allowed to remain unaltered. The fact that in the school leaving certificates issued to some of these students they are described as Indian Christians shows that there was no intention to conceal their true description. Therefore the omission to alter the description in the register even if it amounts to an untrue representation (which is doubtful) was not dishonest or fraudulent. At any rate it would be difficult to hold that it was on that representation that the authorities concerned were induced to give the grant-in-aid. The grant-in-aid is determined according to certain rules. The grant has to be assessed by the Inspecting Officer on whose recommendation the Administrative Officer has to determine the amount of the grant (Rule 113). The Inspecting Officer is to take into account certain circumstances in assessing the grant (Rule 114) and the amount of the grant is also conditioned by rules (Rule 115). No doubt one of provisions in Rule 115 is that in case of a pupil of a backward community the maximum grant can be Rs.12/- per head and in case of any other pupil Rs.10/- per head, but this is an enabling provision and is only one of the various provisions relating to the determination of the amount of the grant. The grantis based on average attendance in the previous year (Rule 115(1)) and is subject to the provision made in the budget of the District School Board (Rule 112). There are, therefore, many factors entering into the determination of the grant and it will be difficult to show without further facts that the failure of the Manager to show the converted boys

as Indian Christians was the factor which induced the authorities concerned to sanction a grant higher than what would have been otherwise given.

Sd.- P.U.Lal,
16/12.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 1404/B-Confl., dated the 17th December 1952.

4-Cs.

H.V.V.
21/6.